

ECF CASE  
JUDGE DANIELS

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

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**JOE HAND PROMOTIONS, INC. , as  
Broadcast Licensee of the June 11, 2005  
Tyson/McBride Program,**

Plaintiff,  
-against-

RICARDO MARTINEZ, *et al.*,  
Defendants.

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**Plaintiff's Affidavit for Default**  
Civil Action No. 07-CV-6907  
HON. GEORGE B. DANIELS

COMMONWEALTH OF PENNSYLVANIA)  
COUNTY OF BUCKS ) ss.:  
 )

JOE HAND, JR., being duly sworn, deposes and states the following:

1. I am President of Plaintiff, Joe Hand Promotions, Inc., and as such am fully familiar with the facts, circumstances and proceedings heretofore had herein.
2. I make this affidavit in support of Plaintiff's request to recover statutory damages, including litigation fees, investigative costs, and interest in the within request for judgment by default.
3. The Plaintiff purchased the territorial rights to exhibit the Tyson/McBride fight which was held on June 11, 2005. Our company thereafter marketed the sub-licensing of the broadcast in the State of Louisiana for a fee. The agreement for exclusive rights to distribute the said fight is attached hereto as Exhibit "A." The rate card for commercial establishments is attached hereto as Exhibit "B."

4. To explain the history of Plaintiff's claim, your deponent submits that shortly after the advent of Pay-Per-View broadcasts, of which our company stands at the forefront, we began to experience a serious erosion of the sales to commercial establishments throughout the United States of America. Thereafter, we endeavored to find out what was the basis for the erosion. Much to our disappointment, we discovered the root cause to be the piracy of our broadcasts by unauthorized and unlicensed establishments.

5. In response, we embarked upon a program which was designed to identify and prosecute commercial establishments which stole our broadcasts.

6. Joe Hand Promotions, Inc., obtained information from auditors who identified establishments that unlawfully exhibited our Program.

7. Prior to the Tyson/McBride broadcast, Joe Hand Promotions, Inc., hired Signal Auditing, Inc. to contract with independent auditors who were assigned to identify establishments that unlawfully exhibited our Program.

8. To insure that only illegal locations were visited by the auditors, a list of authorized and legal locations who paid the required fee to broadcast the Tyson/McBride fight which was held on June 11, 2005, was distributed to Signal Auditing, Inc., who, in turn, provided same to all of their contracting auditors prior to visiting any unauthorized locations on June 11, 2005. This list for the State of Louisiana is attached hereto as Exhibit "C".

9. Defendant, RICARDO MARTINEZ, Individually and d/b/a LUCKY 7, did not purchase the rights to exhibit the event from my company.

10. According to our files, Edgardo Rodriguez, one of the auditors,

visited Defendant's establishment, Lucky 7, located at 658 Prospect Avenue, Bronx, NY, at approximately 9:25 p.m., on February 3, 2007. He entered and observed one (1) television sets exhibiting a portion of the event to about 25 patrons in an establishment with a capacity of 100. The auditor's affidavit attesting to these facts is attached as Exhibit "D."

12. We operate a family business which has paid millions of dollars for the rights to sell sub-licenses for boxing broadcasts and, with the increased frequency of signal piracy, our legal sales have eroded significantly.

13. I have recently been informed, by a member of a bar owners association with whom I was conversing, and who was previously a legal customer, that he would no longer be purchasing the fights from my company at the legal broadcast rate. He said it was not out of disrespect for me or my family but sooner risk being caught as a pirate believing that even if he defaults the Court would only grant a small monetary judgment that would be difficult, if not impossible to collect upon. I was astounded at the brazen disregard such individuals have for the law not to mention the rights of my company.

14. It is essential that I communicate to the Court that to the best of my knowledge this programming is not and cannot be "mistakenly or innocently intercepted." Some methods that a signal pirate can unlawfully intercept and broadcast such program illegally are as follows without limitation:

A. The use of a "blackbox" which is purchased for a fee and when installed on a cable TV line will allow for the descrambled reception of a pay-per-view broadcast, or

B. The purposeful misrepresentation of a commercial establishment as a residential property would allow the purchase of a pay-per-view

broadcast between the sum of \$25.00 and \$50.00, or

C. The use of a illegal cable drop or splice from an apartment or home adjacent to the commercial establishment premises who would purchase the broadcast at a residential price and divert the program to the commercial establishment and/or

D. The same initial actions being employed with respect to a "DSS Satellite Systems" or a "C-Band Satellite System."

These forms of satellite theft also involve the misrepresentation of a residential location, purchase of illegal unincryption devices, and/or the purchase of illegal satellite authorization codes which are readily available on the internet and in trade publications. Attached hereto and made a part hereof are various examples of same.

15. Turning these facts to the matter before the Court I have been advised by counsel that the Court has the discretion in the awarding of damages for these nefarious and illegal activities.

16. It is respectfully submitted to this honorable Court that the unchecked activity of signal piracy not only has resulted in my family's business suffering monumental damage, but also has a negative effect upon lawful residential and commercial customers of cable and satellite broadcasting whose costs are necessarily increased significantly by these illegal activities.

17. We, at Joe Hand Promotions, Inc., believe that such acts of piracy have cost us millions of dollars in the last few years while at the same time causing a reduction in our lawful business resulting from the perceived lack of consequence for such unlawful interception.

18. I therefore, humbly ask this Court to grant the allowance for statutory damages due to the fact that such actions are *per se* intentional and do not and cannot occur without the willful and intentional modification of electronic equipment, the business

misrepresentation of a commercial establishment as a residential one or, the removal of cable traps or devices designed to prevent such unauthorized exhibits.

**WHEREFORE**, your deponent respectfully requests that this Court in its discretion grant judgment by default under 605(a) on COUNT I of the Plaintiff's complaint against the Defendants jointly and severally as follows:

**Against RICARDO MARTINEZ Individually,**

- 1) under 605(e)(3)(C)(i)(II) a sum *in the discretion of the Court, of up to* TEN THOUSAND DOLLARS (\$10,000.00)
- 2) and under 605(e)(3)(C)(ii) a sum *in the discretion of the Court, of up to* ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for enhanced damages for Defendant's willful violation of 605(a)
- 3) and under 605(e)(3)(B)(I) *in the discretion of the Court*, full costs, reasonable attorney fees as set forth in the attorney affidavit.

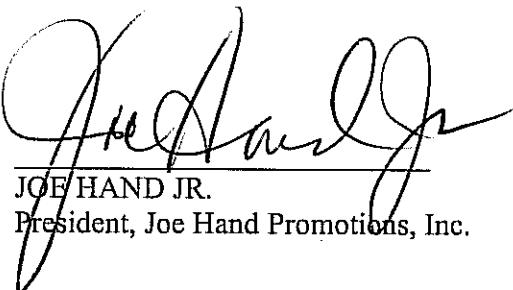
**Against, LUCKY 7,**

- 1) under 605(e)(3)(C)(i)(II) a sum *in the discretion of the Court, of up to* TEN THOUSAND DOLLARS (\$10,000.00)
- 2) and under 605(e)(3)(C)(ii) a sum *in the discretion of the Court, of up to* ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for enhanced damages for Defendant's willful violation of 605(a)
- 3) and under 605(e)(3)(B)(I) *in the discretion of the Court*, full costs, reasonable attorney fees as set forth in the attorney affidavit

Dated: September 18<sup>th</sup> 2007

Sworn to before me on this 18<sup>th</sup> day  
Of September, 2007.

Margaret H. Cicalese  
Notary Public- State of Pennsylvania

  
JOE HAND JR.  
President, Joe Hand Promotions, Inc.

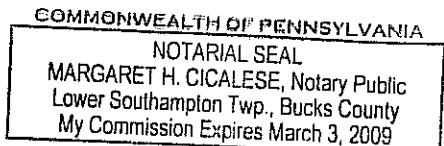


Exhibit A

AGREEMENT  
MIKE TYSON BOUT  
June 11, 2005  
Submitted by Joe Hand, Jr., President  
Joe Hand Promotions, Inc.  
April 4, 2005

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**INTRODUCTION**

Joe Hand Promotions, Inc. (JHP)

Our company is the largest closed-circuit commercial distributor in the United States with the capability to promote, administer and market closed-circuit events. We were the first to exhibit closed-circuit boxing events into racetracks, baseball stadiums, basketball arenas, correctional institutions, colleges and to our armed forces. The administration and control are a major part of the success of our closed-circuit promotion and no other company in the industry comes close to our administrative manpower and resources.

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**GRANT OF RIGHT**

JHP proposes to exclusively administer the closed-circuit commercial distribution of the June 11, 2005 Mike Tyson Right. The territory will be described as the United States, its Possessions and Territories, Canada, Puerto Rico and the territory listed on Exhibit "A" of this agreement proposal.

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**ADMINISTRATION**

JHP will prepare all documentation necessary to meet the legal requirements of the closed-circuit distribution, including but not limited to:

- Preparing licenses and technical documentation for each location,
- Distribution of marketing and promotional materials,
- Collection of all funds and preparation of sales and revenue reports in a timely and orderly fashion.

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#### MARKETING

##### Sale

JEP will utilize marketing materials (posters, ad slicks, press kits, etc) provided by SHOWTIME (if available). These materials will be used to maximize customer awareness of the June 14, 2008 Mike Tyson Fight.

JEP will provide direct marketing, such as mailing pieces, blast faxes, bulk emails and other forms of advertising to create awareness of the program.

JEP maintains a residence sales force of 12 people at our Beaverville location and plans to utilize other companies throughout the country that will assist in selling this program. Sales personnel are provided with complete documentation on potential customers including, name, location, buying history, size of establishment, etc, in order to help them complete the sale.

It is convenient to utilize the services of other regional closed circuit distributors to maximize the sales and distribution efforts on this program. Any such company will be bound under the same terms and conditions listed in any contract between JEP and SHOWTIME.

##### Security and Award

JEP will make a concerted effort to discourage the theft of service. In an effort to protect our closed circuit broadcast rights, JEP will coordinate and finance its own security program. JEP will retain all revenue generated from said security equipment.

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#### MUTUAL OBLIGATIONS

##### SHOWTIME

SHOWTIME will provide JEP with reasonable quantities of promotional materials including posters, ad slicks and press kits, if available.

For digital and commercial customers, SHOWTIME will grant JEP permission to enter into agreements with DirectTV and Dish Network to act as distributor to customers for its commercial location customers utilizing that technology to broadcast the event. In some instances, JEP will ask SHOWTIME to assist in the

negotiations with these official authorization sources in order to reach an agreement on terms for authorizing the requested commercial account.

~~Not cable feed commercial customers; SHOWTIME will grant JEF the right to enter into arrangements with individual cable system operators to act as authorization sources for its commercial customers utilizing that technology to broadcast the event.~~

### JOHN BAND PROMOTIONS

JEP will be responsible for all duties and obligations as outlined in this agreement.

TRIVANDRUM

As compensation for these exclusive rights, HCF will pay **SHOWTIME** 5% of all revenues (less local & state taxes).

### Respiratory hypoxia

Joe Head Productions:  
4174 N. Pennsylvania Blvd.  
Ennisville, GA 19053  
215-364-9000 phone  
215-364-5474 fax  
[jhead@prodigy.com](mailto:jhead@prodigy.com)

Entered in & Accepted by

Showtime Networks Inc.  
1833 Broadway  
New York, NY 10019  
212-704-1269 phone

JavaServer Faces 2.0



June 25, 2005

Joe Hand Productions, Inc.  
407 West Pennsylvania Avenue  
Roasterville, Pennsylvania 19053

Attn: Joe Hand, Jr

Re: Gatti vs. Mayweather  
June 25, 2005

Dear Joe:

This will confirm the terms of our agreement whereby J & J Sports Productions, Inc. ("J&J" or "Promoter") for consideration, hereby grants to you ("you" or "Licensee") the right to license, market, exhibit and sell, only within your defined territory within the United States of America (the "Territory"), Promoter's live telecast of the June 25, 2005 (Gatti v. Mayweather) program and accompanying undercard matches (each a "Program" or "Event"), simultaneously with each event, only at commercial closed circuit television exhibition outlets, such as theaters, bars, clubs, lounge, restaurants and the like, each with a fire code occupancy capacity not to exceed 500 persons per outlet (except for casinos), located within the territory. Your territory shall include the following:

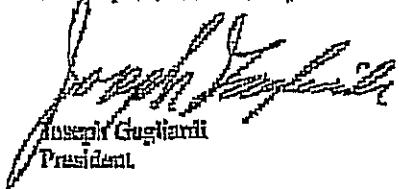
Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia and Wisconsin.

These rights also include the anti-piracy rights, including but not limited to the rights to resolve claims and commence litigation against any identified plaintiff showing any portion of the "Program" without purchasing the license to exhibit same from you or any approved licensee of J & J Sports Productions, Inc.

Joe Hand Productions  
Coasterville, Pennsylvania.  
Page 2 of two

Very truly yours,

J & J Sports Productions, Inc.



A handwritten signature in black ink, appearing to read "Joseph Gagliardi".

Joseph Gagliardi  
President

JG:c

Exhibit B

*Mike Tyson*

(50-5, 44KO's)  
Vs

*Kevin McBride*

(32-4-1, 27KO's)

LIVE ON CLOSED CIRCUIT TV

Saturday, June 11, 2005

Live from MCI Center – Washington DC

*(blackout in effect)*

9:00 pm ET

Undercard Featuring the sensational Laila Ali

**RATECARD**

**\$10.00 x's fire code capacity**

**\$20.00 per person for casinos**

*(Plus \$200 DirecTV Authorization Fee)*

Call Joe Hand Promotions to order!

**800-557-4263**

Visit our website at [www.jacobandpromotions.com](http://www.jacobandpromotions.com)

**Exhibit G**

Jillians @ Albany	33 N Pearl St.	Albany	NY	11207	
Jillians @ Albany	33 N Pearl St.	Albany	NY	11207	
Jillians @ Albany	33 North Pearl St.	Albany	NY	11207	FALSE
Jillians	3349 Sherrillway St.	Astoria	NY	11205	FALSE
Forum	3500 3rd Ave.	Bronx	NY	11217	
McGanns	2000 3rd Ave.	Bronx	NY	11217	
Zon Fifth	2000 3rd Ave.	Bronx	NY	11217	
Jillians @ Farmington	2000 3rd Ave.	Bronx	NY	11217	
Ashley Esplanade	2000 3rd Ave.	Bronx	NY	11217	
Dunes Neutral Gutter	710 5th St.	Brooklyn	NY	11205	
1040 Club	8 West 25th St.	Bronx	NY	11205	
Circus @ New York	978 2nd Ave.	New York	NY	11205	
Merade Smiths	74 1st Ave.	New York	NY	11205	
Playwright	202 W. 49th St.	New York	NY	11222	FALSE
Snowers @ New York East	333 East 20th Street	New York	NY	11205	
Snowers @ West	333 West 27th St.	New York	NY	11205	
Stop O Prints	1690 Second Ave.	New York	NY	11205	
Lecco	1902 Fulton Ave.	New York Falls	NY	14804	
Playere of New York	301 Niagara St.	New York Falls	NY	14804	FALSE
Sun Moon @ Stars	310 Baywalk	Dream Beach	NY	11770	
Nautilus	251 Eastgate Blvd.	Feeblestar	NY	14604	FALSE
Lions Den Sports Bar	17 Pege Ave.	Elated Island	NY	10309	
Lions Den Sports Bar	17 Pege Ave.	Elated Island	NY	11104	FALSE
Full Throop	4125 Greenpoint Ave.	Elated Isle	NY	14204	FALSE
Wells	3030 Ocean Park Rd.	West Seaweed	NY	11500	FALSE
Wells @ Westbury	1604 Old Country Rd.	Westbury	NY	11704	FALSE
Crumb Tavern	1041 Yamiletz Ave.	Yamiletz	NY	11704	FALSE

Exhibit D

PIRACY AFFIDAVIT

STATE OF NEW YORK :

COUNTY OF NEW YORK :

I, Edgardo Rodriguez, the undersigned, being duly sworn according to law, deposes and says, that on Saturday, June 11, 2005, I observed and the commercial establishment known as, LUCKY 7, located at 658 Dawson Street (E) BRONX, N.Y. 10455, at approximately 09:25 p.m. This establishment is described as a 4 story building with numerous apartments on top of the establishment.

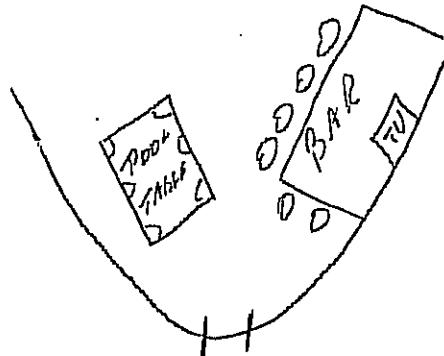
I observed 01 television set, showing the event, which is described and located as follows: A 32 inch color television set behind the bar and in the center.

The television set I observed showed the following: The lower right of the screen showed 2:20 left in round 3 of the Smith an Mitchell fight. Smith is wearing red trunks and black gloves. Mitchell is wearing black and gold trunks with black gloves. Both men are fighting in a blue boxing ring with red, white, and blue ropes.

I was unable to see the cable box or the channel that the television was tuned to.

The inside of the establishment and its internal layout can be described as: A typical licensed establishment that serves alcohol, with chairs and tables.

DRAW DIAGRAM OF INSIDE OF ESTABLISHMENT:



In my opinion, the approximate capacity of this establishment is 100 people. At the time I was in the establishment, I took three head counts. I counted approximately 25 people on the first count, 25 people on the second count, and 25 people on the third count.

I left the establishment at approximately 09:30 p.m.

I took two (2) pictures of the outside of the above described establishment on Tuesday, June 14, 2005 at approximately 8:00 a.m. which are attached hereto and made a part hereof and are intended to substantiate and verify the location of my observations as described herein.

There was not a parking lot adjacent to the establishment.

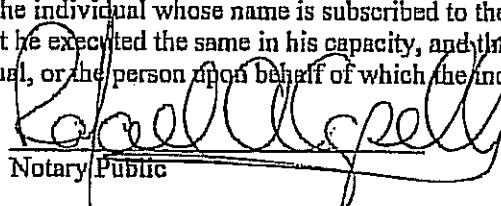
Dated: 6/20, 2005

Signed:   
Print Name: Edgardo Rodriguez  
Agency:  
Address: 218 Grange Road  
City/State/Zip: Otisville, NY 10963  
Phone/fax: (646) 423-2354

State of New York:

County of New York:

On the 20th day of June, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared, Edgardo Rodriguez, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

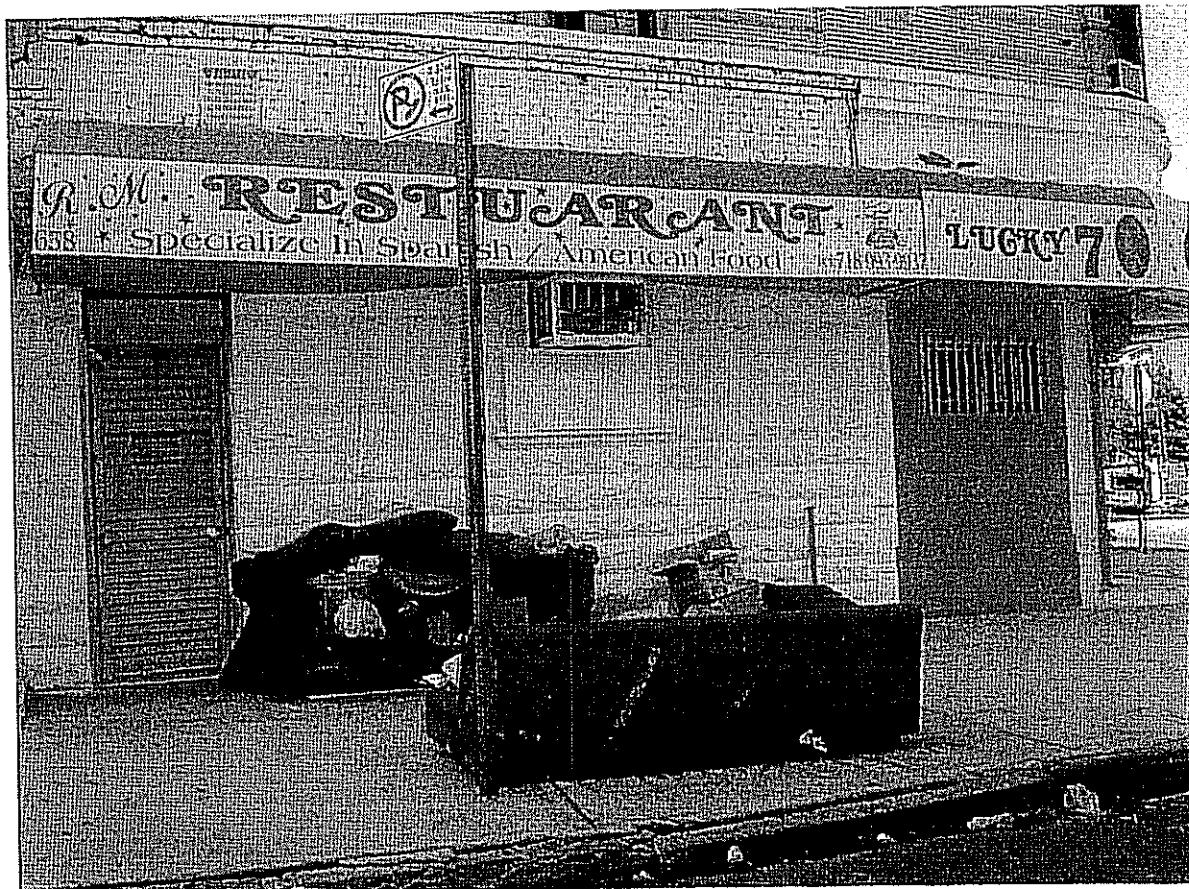
  
Notary Public

RAFAEL A. CAPELLAN  
Notary Public, State of New York  
Reg. No. 01CA6077750  
Qualified in Orange County  
My Commission Expires July 15, 2006



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